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No. 88-982

In the Supreme Court of the United States

OCTOBER TERM, 1988

WALL STREET PUBLISHING INSTITUTE, INC., PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether the First Amendment precludes the entry of an injunction, prohibiting violations of Section 17(b) of the Securities Act of 1933, 15 U.S.C. 77q(b), whose effect would be to require a magazine publisher to disclose the receipt of consideration from an issuer of securities in return for publishing an article describing those securities.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-23a) is reported at 851 F.2d 365. The opinion of the district court (Pet. App. 31a-41a) is reported at 664 F. Supp. 544. A prior opinion of the district court is reported at 591 F. Supp. 1070.

JURISDICTION

The judgment of the court of appeals was entered on June 21, 1988. A petition for rehearing was denied on September 14, 1988. Pet. App. 24a. The petition for a writ of certiorari was filed on December 13, 1988. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Petitioner Wall Street Publishing Institute, Inc. seeks review of a decision reversing the dismissal of this action

and remanding for further proceedings with respect to (i) whether petitioner has violated Section 17(b) of the Securities Act of 1933, 15 U.S.C. 77q(b), and (ii) if so, what the terms of any remedial injunction against further violations should be. Section 17(b), the Act's anti-touting provision, requires a publisher to disclose any consideration received from an issuer of securities in return for publishing articles describing those securities.[1]

1. Petitioner is the publisher of *The Stock Market Magazine* (hereinafter SMM), a financial periodical aimed primarily at small investors, which is issued ten times a year (Pet. App. 2a). Each issue of SMM contains, in addition to general financial news, seven or eight feature articles on specific companies (*id.* at 3a). These articles, as the court of appeals noted, describe the companies "in unabashedly glowing terms" and "uniformly portray the subject firm as an appealing investment prospect because of its market position, product offering, or management strategy" (*ibid.*). Companies seek to have feature articles appear in SMM because they view it as a valuable publicity device to reach the investing community (C.A. App. 377, 393-394, 435-436). As one public relations official who frequently contributes articles to SMM put it, the magazine's "purpose of existence was to provide an oppor-

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[1] Section 17(b) provides:

> It shall be unlawful for any person, by the use of any means or instruments of transportation or communication in interstate commerce or by the use of the mails, to publish, give publicity to, or circulate any notice, circular, advertisement, newspaper, article, letter, investment service, or communication which, though not purporting to offer a security for sale, describes such security for a consideration received or to be received, directly or indirectly, from an issuer, underwriter, or dealer, without fully disclosing the receipt, whether past or prospective, of such consideration and the amount thereof.

tunity for people who wanted stories printed to have the story printed" (*id.* at 388).

The Securities and Exchange Commission initiated this action against petitioner in 1982, alleging, *inter alia*, that petitioner had violated Section 17(b) by failing to disclose consideration received from the companies described in feature articles in return for their publication in SMM. The undisclosed consideration allegedly included SMM's receipt of "free text" (the court of appeals' term for articles written by the featured companies themselves or by writers paid by those companies) and payments for reprints or advertisements purchased as a *quid pro quo* for publication (Pet. App. 4a-5a). Between 1977 and 1982, reprints and advertising accounted for between one-third and two-thirds of SMM's total revenues (see C.A. App. 55-66, 433). According to several public relations agents who had articles about client companies published in SMM, it was generally understood that purchasing reprints was a *quid pro quo* for having an article published (see *id.* at 387-388, 395-397, 447-450). While SMM's managing editor has denied that featured companies were required to buy reprints, he admitted that more than half of the featured companies did so (*id.* at 257). SMM's managing editor also has denied that petitioner made the purchase of advertising a condition for publication of an article, but has observed that some companies "were so grateful at having obtained exposure through favorable stories in the magazine" that they bought advertisements (*id.* at 183-184).

2. In a memorandum and order entered on August 1, 1986, after extended proceedings in the district court and a remand from the court of appeals,[2] the district court

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[2] The Commission's complaint originally alleged violations of the registration and antifraud provisions of the Investment Advisers Act

granted petitioner's motion to dismiss the complaint, holding that any injunction against violations of Section 17(b) would be a "prior restraint" on publication prohibited by the First Amendment (Pet. App. 6a-7a, 38a-39a). The district court stated, however, that the First Amendment would not preclude a criminal action against petitioner for willful violations of Section 17(b) (*id.* at 39a-40a).[3]

3. On appeal by the Commission, the court of appeals reversed the dismissal of the Commission's claim under Section 17(b) and remanded for further proceedings with respect to the Commission's contention that petitioner had violated that provision by failing to disclose consideration—in the form of payments for reprints and advertising—that it received from companies that were the subjects of feature stories (Pet. App. 1a-23a).

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of 1940, 15 U.S.C. 80b-3, 80b-6 (1982 & Supp. IV 1986), and Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. 78j(b), in addition to Section 17(b) of the 1933 Act. In 1984, after substantial discovery, the district court granted the Commission's motion for summary judgment and entered an injunction, phrased in terms of the pertinent statutes, that prohibited future violations of Section 17(b) of the 1933 Act, Section 10(b) of the 1934 Act, and various provisions of the Investment Advisers Act. 591 F. Supp. 1070 (D.D.C. 1984). Petitioner took an appeal, and the case was held in abeyance until this Court's decision in *Lowe* v. *SEC*, 472 U.S. 181 (1985). The court of appeals then remanded to the district court for further proceedings in light of *Lowe*. The Commission did not pursue its claims under the Investment Advisers Act on remand.

[3] The district court also held that the Commission's complaint did not state a claim under Section 10(b) of the 1934 Act, finding that representations about the securities of companies described in the SMM feature articles were not "in connection with the purchase or sale of a security," as required by the statute (Pet. App. at 6a, 36a-37a). The Commission did not take an appeal from this ruling, and it is not before this Court.

At the outset, the court of appeals rejected petitioner's contention that Section 17(b) only applies, as a matter of statutory interpretation, to initial issues of securities (Pet. App. 7a-9a). The court also rejected the district court's holding that any injunction against a publisher under Section 17(b) would be an impermissible prior restraint (Pet. App. 10a-11a). The court explained (*id.* at 10a):

> Orders that are carefully focused, address a continuing course of speech, and are imposed after an opportunity for full merits consideration are not properly analyzed as prior restraints.

The court noted that the injunction sought by the Commission was not "against future articles, as yet unconsidered by any court," but rather "against a continuing practice of publishing feature articles without disclosure of consideration" (Pet. App. 11a). Such an injunction, the court concluded, "is constitutionally permissible, * * * if, but only if, it does not chill or prohibit protected speech in the future" (*ibid.*).[4]

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[4] The court of appeals distinguished the injunction sought by the Commission in *Lowe* v. *SEC*, 472 U.S. 181 (1985), under the registration provisions of the Investment Advisers Act of 1940. That injunction "absolutely prohibited [Lowe] from 'publishing nonpersonalized investment advice and commentary in securities newsletters' " (Pet. App. 12a, quoting 472 U.S. at 183). By contrast, the court of appeals noted, the injunction sought in this case would not prohibit petitioner from publishing any material, but would only require disclosure of consideration received for touting a company's stock (Pet. App. 13a). In addition, the court pointed out that there were no allegations that the newsletter at issue in *Lowe* contained false or misleading information (*ibid.*). But "Stock Market Magazine's presentation of articles as objective reporting, if in fact the articles are paid for by the company featured, would be inherently misleading" (*ibid.*). (The majority opinion in *Lowe* was based upon statutory interpretation, and not upon any constitutional requirement.)

Turning to the question whether any injunction the Commission might obtain would necessarily reach fully protected speech, the court concluded that the feature articles are not necessarily immune from all regulation (Pet. App. 12a). The court explained that the Commission's power to enforce Section 17(b) falls within "the federal government's broad powers to regulate the securities industry" (*id.* at 15a). The court noted that when the federal government regulates such an area of economic activity, "communication of the regulated parties often bears directly on the particular economic objectives sought by the government" (*ibid.*). If such speech were "totally protected" by the First Amendment, the court reasoned, "any regulation of the securities market would be infeasible" (*ibid.*).[5]

After determining that SMM's "failure to disclose consideration received in return for publication is * * *, in principle, constitutionally proscribable" (Pet. App. 18a), the court addressed the particular forms of consideration in issue in this case. It ruled that Section 17(b) could not be applied so as to require disclosure of "consideration" in the form of "*substantial* use of free text" by SMM or payments to public relations firms to produce those ar-

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[5] The Commission argued in the court of appeals that the feature articles promote the sale of companies' securities and thus should be considered "commercial speech" that may be regulated, in order to prevent deception of investors, by an injunction compelling disclosure of consideration given in exchange for publication of the articles. The court of appeals, however, declined to apply the "commercial speech" doctrine to the SMM feature articles (Pet. App. 13a-15a). Instead, it concluded, "Speech relating to the purchase and sale of securities, in our view, forms a distinct category of communications in which the government's power to regulate is at least as broad as with respect to the general rubric of commercial speech" (*id.* at 17a).

ticles (*id.* at 18a-22a). In the court's view, interpreting Section 17(b) to apply to this type of consideration or entering an injunction requiring disclosure would result in both SEC and court interference with the process of editorial control (*id.* at 19a).[6]

The court found no comparable problem with an injunction requiring disclosure of payments for advertisements and reprints that were in fact a *quid pro quo* for publication of the feature articles (Pet. App. 22a). An injunction requiring disclosure of such payments could be fashioned, the court stated, without "trammelling fully protected speech or interfering with editorial practices that cannot be separated therefrom" (*ibid.*). The court concluded that "[a]s long as free text * * * is not included among the elements of consideration that must be disclosed under section 17(b), an injunction should be permissible * * *" (*id.* at 23a). Accordingly, the court of appeals remanded for further proceedings consistent with its opinion (*ibid.*).

ARGUMENT

The decision of the court of appeals does not resolve the merits of this case, determine that petitioner has or has not violated Section 17(b), or establish what the terms of any injunction prohibiting future violations of that provision may be. Further review of this interlocutory ruling is not warranted. Moreover, the court's narrow holding—that it would be constitutional to enter an injunction, based upon a finding that petitioner has violated Section 17(b), requiring disclosure of certain types of consideration received in exchange for publication of SMM's feature stories—is correct and does not conflict with any decision of this Court or any other court of appeals.

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[6] The Commission is not seeking further review of this ruling.

1. The court of appeals remanded this case to the district court for a determination of whether the purchase of advertising or reprints is in fact a *quid pro quo* for having an article about a company and its securities published in SMM.[7] This Court rarely grants review of interlocutory orders that remand for further proceedings. *E.g., Brotherhood of Locomotive Firemen* v. *Bangor & Aroostock R.R.*, 389 U.S. 327, 328 (1967) (denying review "because the Court of Appeals remanded the case, [and thus] it is not yet ripe for review by this Court"); *Hamilton-Brown Shoe Co.* v. *Wolf Bros. & Co.*, 240 U.S. 251, 258 (1916).

Review of the court of appeals' decision would be especially inappropriate because of this Court's traditional reluctance to decide constitutional issues outside of a concrete factual setting. *E.g., Rescue Army* v. *Municipal Court,* 331 U.S. 549, 569 (1947); *Ashwander* v. *TVA*, 297 U.S. 288, 346-348 (1936) (Brandeis, J., concurring); *Socialist Labor Party* v. *Gilligan,* 406 U.S. 583, 588 (1972). Here, petitioner's contention that the First Amendment prohibits any injunction against future violations of Section 17(b) would have to be heard without the benefit of either a factual determination of the existence and nature of past violations or the specific terms of an injunction entered as a remedy.

Indeed, much of the discussion in the petition of the importance of the questions petitioner wishes the Court to address is based upon unfounded assumptions about the form an injunction against future violations might take.

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[7] The court noted that, in prior proceedings, the district court had found that there were conflicts in testimony that precluded summary judgment on the question whether the purchase of reprints was a requirement for having an article published in SMM (Pet. App. 5a). The district court made no determination on the Commission's motion for summary judgment with respect to advertising.

See Pet. 33-37, 41-42. For example, petitioner asserts that an injunction entered against it pursuant to the court of appeals' decision would be "fashioned in the language of the statute" (*id.* at 41-42). The court of appeals, however, stated that an injunction would have to "set forth with particularity the types of consideration that must be disclosed so as to avoid improper encroachment upon protected speech" (Pet. App. 23a). At this juncture, the terms of any injunction that may be imposed on petitioner have not been established, and review by this Court of the constitutionality of any such order would be speculative and hypothetical.

2. The court of appeals correctly held that the First Amendment would permit an injunction requiring petitioner to comply with Section 17(b) by disclosing consideration that it receives from featured companies in exchange for the publication of articles describing their securities. Petitioner does not dispute that a violation of Section 17(b) may be punished in a criminal proceeding brought after publication (Pet. 48), and thereby acknowledges that it has no right to engage in conduct that that provision prohibits (*ibid.*).[8] This Court's cases foreclose petitioner's contention that an injunction against

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[8] There is no merit to petitioner's argument (Pet. 54-55) that injunctions are not required to enforce Section 17(b) since Section 20(b) of the 1933 Act, 15 U.S.C. 77t(b), provides for criminal as well as injunctive remedies for violations of the Act. This argument ignores the very different purposes of the two remedies. The purpose of injunctive relief is to prevent, rather than punish, violations of the securities laws and thereby to protect investors. *SEC* v. *Koracorp Industries, Inc.*, 575 F.2d 692, 697 (9th Cir.), cert. denied, 439 U.S. 953 (1978). See *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944). The appropriateness of injunctive relief is underscored in this case, we believe, by petitioner's promise to this Court that it will violate the statute in the future, apparently without regard to the possibility it may thereby mislead SMM's readers. See Pet. 62.

prospective violations would necessarily be an unconstitutional prior restraint.

As this Court explained in *Pittsburgh Press Co.* v. *Pittsburgh Comm'n on Human Relations,* 413 U.S. 376, 390 (1973), "The special vice of a prior restraint is that communication will be suppressed, either directly or by inducing excessive caution in the speaker, before an adequate determination that it is unprotected by the First Amendment." This vice is absent, however, when an injunction is "based on a continuing course of repetitive conduct," is "clear and sweeps no more broadly than necessary," and does not go into effect before a final judicial determination that the speech involved is unprotected. *Ibid.* The court of appeals was thus plainly correct in concluding that an injunction prohibiting petitioner from future violations of Section 17(b) would be permissible if it were "carefully focused, address[ed] a continuing course of speech, and [were] imposed after an opportunity for full merits consideration * * *." Pet. App. 10a-11a, citing *Pittsburgh Press,* 413 U.S. at 390, and *Vance* v. *Universal Amusement Co.,* 445 U.S. 308 (1980) (per curiam). See Redish, *The Proper Role of the Prior Restraint Doctrine in First Amendment Theory,* 70 Va. L. Rev. 53 (1984).

These criteria would be satisfied if an injunction were entered in this case. Such an order would prohibit only the continuation of conduct that has already been found to have occurred. Thus, an injunction based on such a finding would "address a continuing course of speech." The court of appeals also made clear that any injunction would have to specify the types of consideration that must be disclosed (Pet. App. 23a); such an injunction would undoubtedly be sufficiently "focused" to satisfy *Pittsburgh Press.* Finally, because an injunction would be aimed at practices in which petitioner had engaged in the past, the

district court would be in a position to determine whether any such practices were protected and to tailor its injunction accordingly. There is, in short, no merit to petitioner's contention that this Court's cases foreclose all possibility of a lawful injunction against future violations of Section 17(b).[9]

3. The court of appeals was also correct in analyzing Section 17(b), and an injunction imposed as a remedy for violations of that provision, as aspects of a regulatory scheme designed to eliminate deception in the securities markets. Congress enacted the touting disclosure requirement of Section 17(b) as part of Section 17, which is entitled "Fraudulent Interstate Transactions," for the express purpose of "meet[ing] the evils of * * * articles in newspaper[s] or periodicals that purport to give an unbiased opinion but which opinions in reality are bought and paid for." H.R. Rep. No. 85, 73d Cong., 1st Sess. 24 (1933). See also *United States* v. *Amick*, 439 F.2d 351, 365 (7th Cir.), cert. denied, 403 U.S. 918 (1971) ("The substantial interest of the investing public in knowing whether an apparently objective statement in the press concerning a security is motivated by promise of payment is obvious.").

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[9] None of the cases cited by petitioner suggests otherwise. The prior restraint in *Near* v. *Minnesota*, 283 U.S. 697, 701-702 (1931), for example, was an injunction banning future publication of a newspaper which, on the basis of previous editions, had been found to be "a malicious, scandalous and defamatory newspaper." There was no way of determining, however, whether future editions would contain material that violated the statute. Thus, there was a very real possibility that the injunction would suppress protected speech. See also *Bantam Books, Inc.* v. *Sullivan*, 372 U.S. 58, 70 (1963) (striking down administrative scheme that provided "no safeguards whatever against the suppression of nonobscene, and therefore constitutionally protected, matter"). In this case, by contrast, any injunction would be limited to particular practices already determined to be unlawful and unprotected.

This case illustrates the basis for Congress's concern. As the court of appeals observed, "Stock Market Magazine's presentation of articles as objective reporting, if in fact the articles are paid for by the company featured, would be inherently misleading" (Pet. App. 13a).

Plainly, this deceptive practice can constitutionally be prohibited. The federal government has "broad powers to regulate the securities industry" (Pet. App. 15a). And, as this Court has suggested on several occasions, that power necessarily entails some incidental restraints on speech. *Ohralik* v. *Ohio State Bar Ass'n,* 436 U.S. 447, 456 (1978) ("[n]umerous examples could be cited of communications that are regulated without offending the First Amendment, such as the exchange of information about securities"); *Curtis Publishing Co.* v. *Butts,* 388 U.S. 130, 150 (1967) ("Federal securities regulation, mail fraud statutes, and common-law actions for deceit and misrepresentation are only some examples of our understanding that the right to communicate information of public interest is not 'unconditional.' "); *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.,* 472 U.S. 749, 758 n.5 (1985). As the court of appeals noted, "[i]f speech employed directly or indirectly to sell securities were totally protected, any regulation of the securities market would be infeasible * * *" (Pet. App. 15a).[10]

Contrary to petitioner's contention (Pet. 18-21, 32-34), the Court's decision in *Lowe* v. *SEC, supra,* does not preclude an injunction prohibiting petitioner from

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[10] See *Giboney* v. *Empire Storage & Ice Co.,* 336 U.S. 490, 502 (1949) ("it has never been deemed an abridgement of freedom of speech or press to make a course of conduct illegal merely because the conduct was in part initiated, evidenced, or carried out by means of language, either spoken, written, or printed").

violating Section 17(b). *Lowe* involved the registration requirements of the Investment Advisers Act, and was decided on the basis of an interpretation of that statute. Nothing in *Lowe* suggests that petitioner's undisclosed touting of securities is exempt from the antifraud provisions of the Securities Acts. Indeed, in *Lowe* the majority indicated that remedies for violations of those provisions, including injunctions requiring disclosure in order to avoid misleading investors, would remain fully applicable to publishers. See *Lowe* v. *SEC*, 472 U.S. 209-210 n.56.[11] There is thus no doubt that the Commission has the authority, consistent with the Constitution, to obtain an injunction pursuant to Section 17(b) in order to prevent investors from being deceived by articles that appear to be unbiased but "in reality are bought and paid for" (H.R. Rep. No. 85, *supra*, at 24).[12]

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[11] The Court cited with approval the Commission's successful action against a publisher in *SEC* v. *Blavin*, 557 F. Supp. 1304 (E.D. Mich. 1983), aff'd, 760 F.2d 706 (6th Cir. 1985). In that case, the district court, pursuant to Section 10(b) of the Securities Exchange Act, entered an injunction requiring the publisher to disclose scalping activities.

[12] Moreover, though the court of appeals declined to rest its decision on this ground (Pet. App. 15a), we believe that articles published by petitioner which describe the securities of an issuer in return for consideration could properly be subject to regulation as "commercial speech." SMM's feature articles, as the court of appeals noted, "uniformly portray the subject firm as an appealing investment prospect because of its market position, product offering, or management strategy" (*Id.* at 3a). If those articles were published in return for consideration provided by that firm, they would appropriately be viewed as "expression related solely to the economic interests of the speaker and its audience." *Central Hudson Gas & Elec. Corp. v. Public Service Comm'n*, 447 U.S. 557, 561 (1980). See *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 66-67 (1983) (discussing factors that distinguish commercial and noncommercial speech).

The Court has suggested that the prohibition on prior restraints may not be fully applicable to "commercial speech." *Friedman* v.

Significantly, such an injunction would not prohibit petitioner from publishing anything that it wishes to print, or from accepting consideration from issuers of securities. Rather, the injunction would only require disclosure of any consideration received from an issuer in return for having its securities described in SMM feature articles. "[T]he First Amendment interests implicated by disclosure requirements are substantially weaker than those at stake when speech is actually suppressed." *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 651-652 n.14 (1985).

Indeed, the disclosure requirement at issue here is comparable to the disclosure requirement in the Foreign Agents Registration Act, which was found not to violate the First Amendment in *Meese* v. *Keene,* 481 U.S. 465 (1987).[13] The Court emphasized that the statute in issue

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Rogers, 440 U.S. 1, 10 (1979) (quoting *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council,* 425 U.S. 748, 771-772 n.24 (1976)). Moreover, as the court of appeals found, purportedly objective articles that are in fact bought and paid for are "inherently misleading" (Pet. App. 13a). Commercial speech of this type is unprotected by the First Amendment. See *Central Hudson,* 447 U.S. at 566. And in any event, the government's interest in prohibiting undisclosed touting in order to protect investors is "substantial," and Section 17(b)'s disclosure requirement "directly advances" that interest and is no more extensive than is necessary. *Ibid.* Indeed, because that statute takes the form of a requirement of disclosure, it is sufficient that the statute is "reasonably related" to the objective of "preventing deception." *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. 626, 651 (1985). Under these standards, the application of the statute to petitioner's alleged practices—and, if violations were found, an injunction prohibiting future violations—would clearly be constitutional.

[13] Contrary to petitioner's assertion (Pet. 46-51), the Court's decision in *Miami Herald Publishing Co.* v. *Tornillo,* 418 U.S. 241 (1974), which involved a statute requiring a newspaper to provide equal space to a political candidate, does not foreclose an injunction requiring petitioner to disclose consideration received from companies featured

there, which provided that certain materials distributed by foreign agents must be identified as political propaganda, "simply required the disseminators of such material to make additional disclosures that would better enable the public to evaluate the import of the propaganda." 481 U.S. at 480. As such, the disclosure requirement was " 'intended to label information of foreign origin so that hearers and readers may not be deceived by the belief that the information comes from a disinterested source.' " *Id.* at 480, n.15, quoting *Viereck* v. *United States,* 318 U.S. 236, 251 (1943) (Black, J., dissenting). Similarly, Congress's purpose in enacting Section 17(b) was to assure that persons would not be deceived into believing that information about securities appearing in a publication is disinterested, when in fact it is not. Thus, the disclosure requirement authorized under Section 17(b), like that mandated under the Foreign Agents Registration Act, " 'implements rather than detracts from the prized freedoms guaranteed by the First Amendment' " (*ibid.*).[14]

in SMM. The Court has declined to extend *Tornillo* to regulations requiring disclosures of factual information necessary to avoid deception. *Zauderer* v. *Office of Disciplinary Counsel,* 471 U.S. at 650-651.

[14] Petitioner's argument (Pet. 50-51) that such an injunction would induce editors to be cautious about mentioning companies that had previously purchased reprints and advertising is groundless. In enforcing such an injunction, the critical question would be whether petitioner entered into understandings with particular companies under which the companies would purchase reprints or advertising in return for having specific articles published. As the court of appeals pointed out: "[The] term 'bought and paid for' [see H.R. Rep. No. 85, *supra*] suggests * * * a crisp transaction sharply distinguished from normal journalistic editing or news gathering practices" (Pet. App. 22a).

Petitioner's assertion that the injunction authorized by the court of appeals' decision would permit the SEC to "scrutiniz[e] draft stories, reporters' notes, interview notes and editorial notes" is similarly unwarranted (see Pet. 16). The rules of discovery would enable petitioner to protect any legitimate interest it has in being free from irrelevant or burdensome discovery, and to assert legitimate claims of privilege.

CONCLUSION

The petition for a writ of certiorari should be denied.
Respectfully submitted.

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